

§277.1. Scope and Purpose.

The purpose of this chapter is to establish the procedure and mechanism for an owner, including political subdivisions, of pollution control property, to apply to the Texas Natural Resource Conservation Commission for a determination of pollution control use (use determination).

§277.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), and the Texas Health and Safety Code (THSC), or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of pollution control. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Installation - The act of establishing, in a designated place, something that is put into place for use or service.

Pollution control property - A facility, device, or method for control of air, water, or land pollution as defined by the Property Tax Code, §11.31(b).

Pre-Determination - A list of property, either 100% or partial, that the executive director has determined is pollution control property. An application for property that is on the predetermined equipment list will be considered a Tier I application under the rule's fee structure. The predetermined equipment list will be updated by the staff as required.

Use determination - A finding, either positive or negative, by the commission that the property is used wholly or partly for pollution control purposes.

§277.4. Applicability.

(a) To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution. In addition, pollution control property must meet the following conditions.

(1) Property must have been constructed, acquired, or installed after January 1, 1994.

(2) Land must include only the portion of the land acquired after January 1, 1994 that actually contains pollution control property.

(3) Equipment, structures, buildings, or devices must not have been taxable by any taxing unit in Texas on or before January 1, 1994, except if construction of pollution control property is in progress on January 1, 1994, that portion of the property constructed, acquired, or installed after January 1, 1994, is eligible for a positive use determination.

(4) Property purchased from another owner is eligible for a positive use determination if it is acquired, constructed, or installed by the new owner after January 1, 1994, will be used as

pollution control property, and was not taxable by any taxing unit in which the property is located on or before that date.

(b) The executive director shall determine the portion of the pollution control property eligible for a positive use determination.

§277.6. Exceptions.

The following are not entitled to a positive use determination under this chapter:

(1) property for which a use determination is requested solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution;

(2) property that is used for residential purposes, or for recreational, park, or scenic uses as defined by the Texas Health and Safety Code, §23.81;

(3) motor vehicles; and

(4) property that was subject to a tax abatement agreement executed before January 1, 1994. However, property acquired, constructed, or installed after expiration of a tax abatement agreement could be eligible for a positive use determination.

§277.10. Application for Use Determination.

In applying for a use determination under this chapter, a person or political subdivision shall present an official Texas Natural Resource Conservation Commission (TNRCC) application form or a similar reproduction, accompanied by the appropriate fee, pursuant to §277.20 of this title (relating to Application Fees) to the executive director of the TNRCC. An application must be submitted for each unit of pollution control property or for each facility consisting of a group of integrated units which have been, or will be, installed for a common purpose. Delivery of the application by the United States Postal Service, Certified Mail Receipt, is acceptable. If the applicant, other than a political subdivision, desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the following year. Applications postmarked after this date will not be processed until after review of all applications postmarked by the due date is completed and without regard for any appraisal district deadlines. The application form shall contain at least the following:

(1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control facility, device, or method;

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property;

(4) the specific law, rules, or regulations that are being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, sufficient cost or other information, presented by the person seeking the use determination, that demonstrates to the satisfaction of the executive director the proportion of the installation that is pollution control property;

(6) any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(7) if the property for which a determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the applicant that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability; and

(8) the name and address of the chief appraiser of the appraisal district for the county in which the property is located.

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Effective December 28, 1995

§277.12. Application Review Schedule.

Following submission of the information required by §277.10 of this title (relating to Application for Use Determination), the executive director of the Texas Natural Resource Conservation Commission (TNRCC) shall determine whether the pollution control property is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. If the determination is that the property is used partly for pollution control then the executive director shall determine the proportion of the property used for pollution control.

(1) As soon as practicable, the executive director shall send notice by regular mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a use determination under this chapter.

(2) Unless the application is not timely received as discussed in §277.10 of this title, within 30 days of receipt of an application for use determination, the executive director shall mail written notification informing the applicant that the application is administratively complete or that it is deficient. If the application is deficient, the notification shall specify the deficiencies, and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, then the application will be returned. Additional technical information may be requested within 60 days of issuance of an administrative completeness letter. If the applicant does not provide the requested technical information within 30 days, the application will be returned. The applicant may refile the application.

(3) The executive director shall determine whether the property is used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the equipment included in the application that is deemed pollution control property.

(A) If a positive determination is made, the executive director shall issue a use determination letter to the applicant stating that determination and the proportion of the property that is pollution control property.

(B) If a negative determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

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§277.20. Application Fees.

(a) Fees shall be remitted with each application for use determination in an amount based on the following.

(1) Tier I--The fee for an application for property that has been granted a predetermination as pollution control, either partial or 100%, and the application seeks no variance from that determination, shall be \$50.

(2) Tier II--The fee for an application for property that is used wholly (100%) for the control of air, water, and/or land pollution, but not designated as eligible for predetermination, shall be \$1,000.

(3) Tier III--The fee for an application for property used partially (less than 100%) for the control of air, water, and/or land pollution, but not designated as eligible for predetermination, shall be \$2,500.

(b) Fees shall be forfeited for applications for use determination which are denied or returned. An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §277.12(2) of this title (relating to Application Review Schedule). The fee deficiency must be remitted with the response to the deficiency notice before the application will be deemed complete.

(c) All fees shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) "Proposition 2" and delivered with the application to the TNRCC Proposition 2 Section, at the address listed on the application form.

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